

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

DANIEL D. ALMAGUER,
Defendant.

No. CR-08-2010-FVS

ORDER DENYING MOTION TO
AMEND THE JUDGMENT

THIS MATTER comes before the Court without oral argument based upon the defendant's motion to amend the judgment. He is representing himself. The government is represented by Assistant United States Attorney Jane Kirk.

BACKGROUND

On March 16, 2009, judgment was entered based upon the defendant's pleas of guilty to the crimes of possession of an unregistered firearm and distribution of a controlled substance. The Court sentenced the defendant to concurrent 60-month terms of imprisonment. On July 6, 2011, the defendant asked the Court to amend the judgment.

RULING

"As a general matter, courts may not alter a term of imprisonment once it has been imposed.'" *United States v. Leniear*, 574 F.3d 668, 673 (9th Cir.2009) (quoting *United States v. Hicks*, 472

1 F.3d 1167, 1169 (9th Cir.2007)). "However," as the Ninth Circuit
2 explained in *Leniear*, "18 U.S.C. § 3582(c)(2) creates an exception to
3 this rule by allowing modification of a term of imprisonment if: (1)
4 the sentence is 'based on a sentencing range that has subsequently
5 been lowered by the Sentencing Commission'; and (2) 'such a reduction
6 is consistent with applicable policy statements issued by the
7 Sentencing Commission.'" *Id.* (quoting § 3582(c)(2)). The defendant
8 has not identified any action of the Sentencing Commission after March
9 16, 2009, that would have lowered his guideline range at the time of
10 sentencing were it applied retroactively. Consequently, the Court
11 lacks authority to modify the judgment.

12 **IT IS HEREBY ORDERED:**

13 1. The defendant's motion to modify the judgment (**ECF No. 94**) is
14 denied.

15 2. The defendant is not entitled to a certificate of
16 appealability.

17 **IT IS SO ORDERED.** The District Court Executive is hereby
18 directed to enter this order and furnish copies to the defendant and
19 to counsel for the plaintiff.

20 **DATED** this 13th day of July, 2011.

21 s/ Fred Van Sickle
22 Fred Van Sickle
23 Senior United States District Judge
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